

REMARKS

This Amendment is in response to the non-final Office Action dated July 10, 2009 the period of response for which extension is requested by the attached Petition for Extension of Time.

In the office action, claims 2 and 10 were objected to because of minor informalities. Claims 18-20 were rejected under 35 USC §112 as being indefinite. Claims 1, 3-8, 10, 13-19, and 21 were rejected under 35 USC §102 as being anticipated by Hirabayashi et al. (U.S. Patent 6,904,302, "Hirabayashi"). Claims 2 and 20 were rejected under 35 USC §103 as being obvious over Hirabayashi. All rejections are traversed in so far as the rejections are applicable to the present claims. Reconsideration and allowance of this application, as amended, is respectfully requested.

In regards to the objections of claims 2 and 10, the claims have been amended according to Examiner's suggestions, and therefore the objections should be withdrawn.

In regards to the rejection of claims 18-20 under 35 USC §112 as being indefinite, the claims have been amended in line with Examiner's suggestions. In regards to the relationship between the probe, holder portion, and optical fibers of claim 18, lines 2-9, which the rejection says is "not clearly set forth," the relationship is shown in Fig.1, and described in paragraphs [0027]-[0028] of the application's U.S. PG-PUB 2006/0058594. Paragraph [0027] discloses an embodiment wherein "the irradiation and detection optical fibers 102 and 103 are drawn out of a side surface of the probe main body 101." In addition, paragraph [0028] discloses an embodiment wherein "[t]he probe main body 101 has three holder portions 104. In each holder portion 104, three optical fiber head portions (including an irradiation

bed portion and a detection bed portion) are provided at equal intervals." Therefore, claim 18 is not indefinite, and rejection should be withdrawn.

Applicants note that the present application is a 371 of PCT/JP03/15880 filed December 11, 2003 and which claims priority to Japanese Application No. 2002-360220, filed in Japan on December 12, 2002 and for Japanese Application No. 2003-276767, filed in Japan on July 18, 2003, the certified copies of such applications being present in the records of the USPTO for this application, as is apparent from PAIR. Submitted herewith is a verified English translation of Japanese Patent Application No. 2003-276767, filed in Japan on July 18, 2003, which applicants submit supports the claimed invention.

In regards to the rejections of claims 1, 3-8, 10, 13-19, and 21 under 35 USC §102 as being anticipated by Hirabayashi, and the rejections of claims 2 and 20 were rejected under 35 USC §103 as being obvious over Hirabayashi, applicants submit that the verified English translation of the priority document of Japanese patent application No. 2003-276767, filed in Japan on July 18, 2003, for which priority has been claimed overcomes such rejection.

More specifically, the Hirabayashi patent has a U.S. filing date of August 13, 2003 which is subsequent to the foreign application priority date of Japanese patent application No. 2003-276767 of July 18, 2003.

In view of the verified English translation of the priority document submitted in accordance with 37 CFR § 1.55 and MPEP § 201.15, Applicants submit that Hirabayashi reference has been overcome. Therefore, all rejections based on the Hirabayashi reference should be withdrawn, and all claims should now be allowable.

If the Examiner believes that there are any other points which may be clarified or otherwise disposed of either by telephone discussion or by personal interview, the

Examiner is invited to contact Applicants' undersigned attorney at the number indicated below.

EXAMINER INVITED TO TELEPHONE

The Examiner is herein invited to telephone the undersigned attorneys at the local Washington, D.C. area telephone number of 703/312-6600 for discussing any Examiner's Amendments or other suggested actions for accelerating prosecution and moving the present application to allowance.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims listed above as presently being under consideration in the application are now in condition for allowance.

To the extent necessary, Applicant petitions for an extension of time under 37 CFR §1.136. Authorization is herein given to charge any shortage in the fees, including extension of time fees and excess claim fees, to Deposit Account No. 01-2135 (Case No. 1369.45130X00) and please credit any excess fees to such deposit account.

Based upon all of the foregoing, allowance of all presently-pending claims is respectfully requested.

Respectfully submitted,
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Attachment: Verified English Translation of Japanese Patent
Application No. 2003-276767